

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

DR. TRUST JUSTICE “TJ” TRUTH, ESQ., )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 )  
 ASHLEY GLOBAL RETAIL, LLC, )  
 )  
 )  
 Defendant. )  
 )  
 )  
 )  
 )  
 )

Case No.: 2:23-cv-01010-GMN-NJK

**ORDER**

Pending before the Court is the Motion to Dismiss, (ECF No. 6), filed by Defendant Ashley Global Retail, LLC. Also pending before the Court is the Motion to Dismiss (ECF No. 10), filed by Plaintiff Dr. Trust Justice “TJ” Truth. Defendant filed a Response, (ECF No. 11).

For the reasons discussed below, the Court construes Plaintiff’s Motion to Dismiss as a notice of voluntary dismissal without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(i).

**I. BACKGROUND**

This case arises out of Defendant’s failure to deliver Plaintiff’s purchased sofa. Plaintiff Dr. Truth Justice TJ Truth, proceeding pro se, filed a Complaint in Eighth Judicial District Court against Defendant Ashley Global Retail, LLC. (*See* Compl., ECF No. 1-2). The Complaint alleges that Plaintiff purchased a sleeper sofa from Defendant that had not been delivered and placed in his living room. (*Id.* at 6). Defendant attempted to deliver the sofa, but it was too large to fit through the door frame in Plaintiff’s home. (*Id.* at 18). When Defendant realized the sofa could not be delivered to Plaintiff’s living room, it told Plaintiff to reschedule the delivery or cancel the sofa purchase and receive a refund. (*Id.* at 19). Plaintiff alleged claims for (1) breach of contract; (2) breach of the implied covenant of good faith and fair

1 dealing; (3) tortious breach of the implied covenant of good faith and fair dealing; (4)  
 2 declaratory judgment; and (5) abuse, neglect or exploitation of an older vulnerable person. (*Id.*  
 3 at 25–26).

4 After removing to federal court, Defendant filed a motion to dismiss with prejudice for  
 5 failure to state a claim. (Def.’s Mot. Dismiss, 6:13–7:20, ECF No. 6). Less than two weeks  
 6 later, Plaintiff filed his own Motion to Dismiss, without prejudice, because his sofa had been  
 7 delivered. (Pl.’s Mot. Dismiss, ECF No. 10). Defendant filed a Response to Plaintiff’s Motion  
 8 to Dismiss, arguing that the case should be dismissed *with* prejudice because Plaintiff’s  
 9 underlying claim was fully resolved. (Response, ECF No. 11).

## 10 **II. LEGAL STANDARD**

11 Rule 41(a)(1) of the Federal Rules of Civil Procedure allows a plaintiff to voluntarily  
 12 dismiss an action without a court order by filing a notice of dismissal before the opposing party  
 13 serves an answer or a motion for summary judgment. A notice or stipulation under Rule  
 14 41(a)(1) usually results in dismissal without prejudice. *McKenzie v. Davenport–Harris Funeral*  
 15 *Home*, 834 F.2d 930, 934–35 (9th Cir. 1987). Even if the defendant has filed a motion to  
 16 dismiss, the plaintiff may terminate his action voluntarily by filing a notice of dismissal under  
 17 Rule 41(a)(1). *Miller v. Reddin*, 422 F.2d 1264, 1265 (9th Cir. 1970). Rule 41(a)(1) grants a  
 18 plaintiff “an absolute right to dismiss without prejudice . . . and requires no action on the part of  
 19 the court.” *United States v. Real Prop. Located at 475 Martin Lane, Beverly Hills, CA*, 545  
 20 F.3d 1134, 1145 (9th Cir. 2008) (internal citation omitted). “The filing of the notice [of  
 21 dismissal under Rule 41(a)(1)] itself closes the file.” *Pedrina v. Chun*, 987 F.2d 608, 610 (9th  
 22 Cir. 1993) (internal citations and alterations omitted).

## 23 **III. DISCUSSION**

24 Under Rule 41(a) of the Federal Rules of Civil Procedure, a Plaintiff may dismiss an  
 25 action by filing a notice of dismissal before the opposing party serves either an answer or a

1 motion for summary judgment. Here, although Plaintiff's request to voluntarily dismiss was  
2 styled as a Motion to Dismiss, Plaintiff does not need a court order because Defendant has not  
3 served an answer or summary judgment motion. Defendant has filed its own Motion to  
4 Dismiss, but that does not prevent Plaintiff from voluntarily dismissing his case. *See Miller v.*  
5 *Reddin*, 422 F.2d 1264, 1265 (9th Cir. 1970).

6 "Courts in this circuit have an obligation to give a liberal construction to the filings of  
7 pro se litigants." *Blaisdell v. Frappiea*, 729 F.3d 1237, 1241 (9th Cir. 2013). In this case,  
8 Plaintiff's Motion to Dismiss explained that the purpose for his lawsuit—obtaining the delivery  
9 of his sofa—was fulfilled, so he no longer had a need to pursue the suit. (Pl.'s Mot. Dismiss at  
10 6). Therefore, the Court construes Plaintiff's motion as a notice of voluntary dismissal.

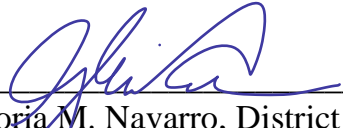
11 Plaintiff's request for dismissal is effective without a court order. However, for  
12 purposes of clarity, the Court orders that, in light of Plaintiff's Notice of Voluntary Dismissal,  
13 (Pl.'s Mot. Dismiss, ECF No. 10), this case is deemed dismissed.

#### 14 **IV. CONCLUSION**

15 **IT IS HEREBY ORDERED** that in light of Plaintiff's Notice of Voluntary Dismissal,  
16 (ECF No. 10), this case is deemed **DISMISSED WITHOUT PREJUDICE** pursuant to  
17 Federal Rule of Civil Procedure 41(a)(1)(A)(i).

18 Based on the foregoing, the Clerk of Court is instructed to close this case. Due to recent  
19 Undeliverable Mail Notifications, (ECF Nos. 8, 12), the Clerk of Court is further instructed to  
20 email this order to Plaintiff at tjtruthesq@gmail.com.

21 **DATED** this 24 day of October, 2023.

22  
23   
24 \_\_\_\_\_  
25 Gloria M. Navarro, District Judge  
UNITED STATES DISTRICT COURT

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25